

ORDER NO. 2753

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Competitive Product Prices
Priority Mail Contract 40 (MC2012-38)
Negotiated Service Agreement

Docket No. CP2012-46

ORDER GRANTING SECOND MOTION FOR TEMPORARY RELIEF

(Issued October 15, 2015)

The negotiated service agreement approved in this proceeding (Existing Agreement) is set to expire October 15, 2015.¹ The Postal Service filed a motion for temporary relief and notice of filing modification to the Existing Agreement extending the expiration date.² This is the Postal Service's second motion requesting temporary relief and extension of the expiration date of the Existing Agreement. See Motion at 1.

The Postal Service expects to sign a new agreement with the customer in the next two weeks, which it will then file with the Commission. *Id.* The Postal Service's delay in filing the new agreement creates a window between the expiration of the

¹ Order Granting Motion for Temporary Relief in Part, August 12, 2015, at 2 (Order No. 2660).

² Motion of the United States Postal Service for Temporary Relief, October 8, 2015 (Motion).

Existing Agreement and the effective date of a potential new agreement. *Id.* at 1-2. To remedy its lapse, the Postal Service requests the Commission grant an extension to allow the Existing Agreement to remain in effect for 30 additional days. *Id.* at 2.

In Order No. 2660 the Commission previously allowed the Postal Service an additional 45 days to address certain issues, including the need to exchange shipping data with the customer and the need for the customer to upgrade information technology systems. See Order No. 2660 at 2.³ In granting the Postal Service's request, the Commission clearly signaled that any future extensions "should state with particularity the circumstances necessitating the additional extension." Order No. 2660 at 2. In its most recent filing, however, the Postal Service does not follow the Commission's specific direction, but rather represents that the necessary data have been exchanged and that a pricing proposal is currently before the customer. Motion at 1.

The Commission notes that this Motion is the Postal Service's second request for a temporary extension with the same reason as the first – the Postal Service's failure to timely file a successor agreement for review and approval. The Commission has already provided an additional 45 days for the Postal Service to resolve issues with the customer and have a successor agreement filed for review. In this instance, the Postal Service represents that it has taken steps to finalize a new agreement with its customer, and anticipates a signed successor agreement within the coming weeks.

The Postal Service is advised that the Commission's regulations clearly identify the minimum requirements for timing and content for motions such as these. Recognizing the practical impact of its decision and to allow the Postal Service the flexibility that it needs to continue this agreement, the Commission grants this limited extension, absent harm to the public interest or prejudice to any party, and urges the Postal Service to provide the new agreement for review and approval at least 15 days before this temporary extension expires. The Existing Agreement is modified to

³ See *also* Motion of the United States Postal Service for Temporary Relief, August 11, 2015, at 2.

continue through, and will expire on November 15, 2015, unless terminated earlier pursuant to the terms of the agreement. In considering any future request for an extension from the Postal Service, the Commission will closely evaluate the Postal Service's compliance with Commission regulations to ensure that such requests are appropriately considered.

It is ordered:

1. The Motion of the United States Postal Service for Temporary Relief, filed October 8, 2015, is granted.
2. The Existing Agreement will expire November 15, 2015, or the day prior to the date the changes in rates of general applicability for competitive products go into effect, whichever occurs first.

By the Commission.

Ruth Ann Abrams
Acting Secretary

Vice Chairman Hammond, dissenting.
Commissioner Goldway, dissenting.

DISSENTING OPINION OF VICE CHAIRMAN HAMMOND

The Commission has already granted a 45-day extension on this contract, longer than normal. In doing so, the Commission stated that, should another extension become necessary, the Postal Service “should state with particularity the circumstances necessitating the additional extension.” Unfortunately, the Postal Service’s new motion ignores this directive.

Instead, and not for the first time, the Postal Service faults the Commission’s review procedures. Those procedures are mandated by law, and their details were formulated in a process to which the Postal Service was an active party. The Postal Service may seek the initiation of a rulemaking proceeding to modify those procedures, within the law, at any time.

It appears that the Postal Service has come to rely on extension requests as a standard component of its contracting process, rather than the limited and exceptional practice the Commission intended. I do not find reason to grant a further extension on this contract.

Tony Hammond

DISSENTING OPINION OF COMMISSIONER GOLDWAY

I concur with Vice Chairman Hammond in finding that the Postal Service has not properly fulfilled its obligations to either timely submit a new contract for approval nor to adequately respond to a Commission directive to provide a full explanation for the need for further extensions in its most recent order extending the initial expiration of this contract.

The Postal Service cites the timing of the regulatory process as a reason for its need for an extension. The Commission granted a 45-day extension to allow the Postal Service additional time to negotiate and finalize a new contract for approval, but the Postal Service now also requests even more time and cites the timing of the regulatory process as the problem. This most recent request fails to acknowledge that the Postal Service has already been given an extension to allow additional time on this contract to negotiate, finalize, and submit it for approval.

It appears that, over time, the Postal Service has taken the Commission's swift action on motions for extension to mean that such motions shall be granted as a matter of course. That is not the case. The burden remains on the Postal Service to justify each extension request. It has not done so here. It is the role of the Commission to hold the Postal Service accountable.

Ruth Y. Goldway

SUPPLEMENTAL OPINION OF COMMISSIONER LANGLEY
AND COMMISSIONER ACTON

We approve the Postal Service's request for an extension so that it may conclude its negotiations. However, we share Vice Chairman Hammond's concerns, and we agree with his statement that the Postal Service faults the Commission's oversight even though the procedures are mandated by law.

Nanci E. Langley

Mark Acton